

OGC 78-1423

17 March 1978

MEMORANDUM FOR : Director of Logistics

STATINTL FROM : [REDACTED]
Office of General Counsel

SUBJECT : Public Buildings Act Requirements

REFERENCE : Memo for EO/DDA from D/L, Subject:
Outstanding Requests to OGC; Dated
17 February 1978 (OL 8 0704)

1. This Office has in the past advised that, in the presence of a specific appropriation for a construction project normally subject to the Public Buildings Act, a failure to comply with the special authorization requirements of the Act does not render the appropriation invalid. As you are aware, the portion of the Act here pertinent (40 U.S.C. 606(a)) sets up a requirement that appropriations be approved by the Senate and House Committees on Public Works if they involve expenditures in excess of \$500,000 for the acquisition, construction or alteration of any public building. The legislative history of the Act indicates that, while an appropriation that had failed to be approved as required might be defeated by a point of order raised by an interested member of the Congress, the Congress could validly appropriate without regard to the Public Buildings Act if it chose to do so.

2. It continues to be the opinion of this Office that in those cases in which the Congress chooses to appropriate without regard to the Public Buildings Act, the funds thus appropriated are available for expenditure in accordance with the purpose of the appropriation. In such a case the Agency may certify to GSA pursuant to 41 C.F.R. 101-19.302 that the funds in question are available without regard to the provisions of the Public Buildings Act.

3. However, the Agency is in a position to so certify only when the Congress has explicitly appropriated for the construction, alteration or acquisition in question. Because the Agency's budget is not overtly appropriated by line item, the best evidence of which projects the Congress has approved and appropriated funds for are those specifically set forth in the congressional budget submission for the Agency, as modified by expressions of intent in

reports or otherwise regarding what is being approved when the Agency's budget is appropriated. An oblique or ambiguous reference in the budget submission will not suffice. It must be made clear in the budget submission placed before the Congress that funds in excess of \$500,000 are being requested for the construction, alteration or acquisition of a building. If these facts are not made clear, it cannot be fairly presumed that the Congress has chosen to disregard its own authorization requirement and is appropriating without regard to the Public Buildings Act.

4. Because the certification requested by GSA to the effect that certain funds have been appropriated without regard to the Public Buildings Act is basically a legal determination, before such certifications are offered the facts and circumstances involved should be reviewed by this Office.

[REDACTED] STATINTL